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DIVISION II
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**COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON**

CHRIS JONES and KATRINA JONES,

Appellants,

v.

**DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE
OF WASHINGTON,**

Respondent.

BRIEF OF APPELLANTS

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I. INTRODUCTION

The Appellants, Chris Jones and Katrina Jones, are married. Chris Jones previously owned a sole proprietorship business, Dream Team Construction (hereafter the “Firm”), which is no longer doing business.

The Appellants appeal the order of Thurston County Superior Court dismissing the administrative appeal of tax assessments in the total sum of \$106,843.51, plus accruing interest, which the Washington State Department of Labor and Industries (hereafter the “Department”) had assessed against the Appellants. The dismissal was entered on February 20, 2018, in the Thurston County Superior Court by the Honorable Carol Murphy. The trial court ruled that the Appellants did not demonstrate “undue hardship” under RCW 51.52.112, and ordered the Appellants to prepay the assessment in full before proceeding with the merits of their appeal. The Appellants did not prepay the assessment in full; consequently, the trial court dismissed their appeal.

Through their appeal to this Court, Mr. and Mrs. Jones assert that the trial court’s order was erroneous. Accordingly, the Appellants seek reversal and reinstatement of their administrative appeal.

II. ASSIGNMENTS OF ERROR

Assignment of Error No. 1: The trial court erred as a matter of law in its construction of RCW 51.52.112 when it ruled that the “undue hardship” standard requires the Appellants to show hardship not to themselves or to the Firm, but to the third parties, such as the Firm’s employees or customers. RP 23.¹

Assignment of Error No. 2: The trial court erred as a matter of law in contrasting the undue hardship standard of RCW 51.52.112 with the indigency standard of GR 34.²

Assignment of Error No. 3: The trial court erred in failing to find undue hardship under RCW 51.52.112 based on the evidence presented by the Appellants.

Assignment of Error No. 4: The Department should be precluded from arguing that, because the Appellants failed to bring their own motion for an order of undue hardship before the trial court, the Appellants should now be precluded from appealing the dismissal of their appeal, where the trial court

¹ The abbreviation “RP” refers to the verbatim report of proceedings on December 8, 2017, at the trial court, using the paginated designation identified therein.

² GR 34 refers to the Washington State Court Rules, General Rule number 34, Waiver of Court and Clerk’s Fees and Charges in Civil Matters on the Basis of Indigency.

ruled on the hardship issue during the Department's motion hearing, and the Department did not object. RP 22.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue No. 1: Whether the trial court erred as a matter of law in its construction of the undue hardship standard under RCW 51.52.112 when it ruled that this statute contemplated the term "hardship" to mean a showing of hardship to the third parties, rather than hardship to the Appellants themselves. RP 23. *Assign. of Error Nos. 1, 2.* Here, the Appellants presented compelling evidence showing that they were unable to prepay the remaining unpaid portion of the Department's assessment. However, the trial court ruled, without citing to any authority, that the undue hardship standard under RCW 51.52.112 means hardship to the third parties, rather than to the Appellants. The trial court contrasted the undue hardship standard of RCW 51.52.112, which applies to the employers, with the personal indigency standard of GR 34, which applies to the individual litigants, and concluded that undue hardship for an employer must mean something different than indigency for an individual. RP 22-23.

The trial court's interpretation of the undue hardship standard under RCW 51.52.112 would require the Appellants to show hardship to their employees and/or customers – a showing that is impossible not only for

these Appellants, but also for any firm that is not doing business at the time it files an appeal with a superior court.

Moreover, for any appellant that may have employees and customers at the time an appeal is filed, the trial court's interpretation of the undue hardship standard would require a separate evidentiary hearing on the sole issue of whether various employees and/or customers of that appellant would experience undue hardship, if the appellant were to prepay the Department's assessment. Such a hearing would create an additional financial burden for an appellant who may already be experiencing financial hardship. Creating an additional financial burden is not the legislative intent of RCW 51.52.112.

Finally, the undue hardship standard should not be interpreted in a way that completely disregards the financial burden on the Appellants themselves.

Issue No. 2: Whether the trial court erred when it failed to rule on sufficiency of the evidence presented to show that the Appellants had no financial ability to prepay the assessment. *Assign. of Error No. 3.* The Appellants presented compelling evidence showing that the Firm had gone out of business after the Department revoked the Firm's contractor's license; the Appellants had no assets of value; the Appellants' family home

was undergoing foreclosure proceedings; and the Appellants had no financial resources. CP 65-119. However, the trial court failed to rule on sufficiency of this evidence, finding instead that “other questions” – the questions pertaining to the hardship on the Appellants’ employees or customers – were unanswered, which caused the trial court to make a finding that undue hardship did not exist. RP 24. It is impossible for the Firm, which has gone out of business, to show hardship to its non-existent employees or non-existent customers. Moreover, it was an error for the trial court to completely disregard the Appellants’ own financial hardship.

Issue No. 3: Whether the Department should be barred from raising the claim that, because the Appellants failed to bring their own motion for an order of undue hardship, the Appellants should now be precluded from appealing the dismissal of their appeal, where the trial court ruled on the hardship issue during the Department’s motion hearing, and the Department had no objection to this ruling. RP 22. Because the Department did not object, it should now be estopped from making a claim that the Appellants were required to bring their own motion for an order of undue hardship in order to prosecute their appeal. *Assign. Of Error No. 4.*

IV. STATEMENT OF THE CASE

Chris and Katrina Jones are married. CP 9. Mr. Jones, a carpenter, used to own a small construction company, Dream Team Construction, a sole proprietorship. CP 9. The Department conducted an audit of the Firm for the second quarter of 2013 through the first quarter of 2015 to determine whether it had correctly paid Industrial Insurance premiums. CP 66. As a result of the audit, the Department issued an estimated assessment of the industrial insurance premiums in the amount of \$100,321.87, plus interest and penalties. CP 66.

The Firm unsuccessfully challenged the Department's assessment, first to the Department, via its reconsideration process, and then to the Board of Industrial Insurance Appeals (hereafter the "Board"). CP 8-18.

The Firm then appealed the Board's decision to the superior court. CP 1-7. In its petition for review, the Firm requested a waiver of the requirement to prepay the Department's assessment, per RCW 51.52.112, due to undue hardship. CP 4-5.

While the Firm did pay \$21,742 of the assessment, it did not prepay the additional sum of \$106,843.51 before or after bringing the action to superior court. CP 17, 128. Other than the request to waive the prepayment requirement, with was contained in its petition for review, the Firm did not

file a separate motion for an order of undue hardship under RCW 51.52.112. CP 4; RP 12-13.

Because the Firm did not prepay the assessment in full, the Department moved to dismiss the appeal. CP 36–45. In its motion, the Department argued that the Firm’s request for a finding of undue hardship was not supported by evidence of such hardship. CP 38.

In response to the motion to dismiss, the Firm argued that RCW 51.52.112 did not require it to prepay the remaining portion of the assessment because, under a statutory exception, the Firm would suffer undue hardship if it is ordered to prepay the remaining portion of the assessment. CP 65–119. To support its contention, the Firm presented and relied on the following evidence:

Declaration of Mr. Jones (CP 74–80); the printout from the Department’s website showing that the Firm no longer had its contractor’s license (CP 81–82); the letters from Wells Fargo Bank stating Mr. Jones’ personal bank account was overdrawn for a prolonged period of time and later closed due to the overdraft (CP 83–83); the Wells Fargo Bank business account statement for the Firm showing the balance in the account of less than \$55 (CP 85–89); the Notice of Foreclosure and Notice of Trustee Sale of Mr. and Mrs. Jones’ primary residence (CP 90–100); a credit report

showing, among other things, the IRS federal tax liens filed against Mr. and Mrs. Jones (CP 101); the IRS balance due notices issued to Mr. Jones (CP 102–05); the titles to the construction equipment used by the Firm, which showed that the Firm did not own this equipment (CP 106–108); the declaration of Katrina Jones (CP 109–112); Wells Fargo Bank statements of Katrina Jones (CP 113–118); and the paystub of Katrina Jones (CP 119).

The two declarations and all the supporting documents showed compelling evidence in great detail that the Firm had gone out of business because it no longer had its contractor’s license, and that Mr. and Mrs. Jones lacked any financial resources to prepay the remaining portion of the Department’s assessment. CP 65–119.

However, the trial court did not rule on the sufficiency of this evidence; instead, it ruled that the undue hardship standard of RCW 51.52.112 is different than the indigency standard of GR 34, and for that reason, the trial court found that undue hardship did not exist. RP 22-25. Specifically, the trial court ruled that, under RCW 51.52.112, the hardship standard means the following: “Would other people be put out work, what would the ramifications be for other people, that kind of hardship, are there clients of the employer that would be put in a difficult situation, those sorts of things that I think are different than just showing indigency.” RP 23.

The Firm did not prepay the remaining portion of the Department's assessment; therefore, the trial court dismissed the Firm's appeal and issued a judgment in favor of the Department. CP 128–130.

Mr. and Mrs. Jones filed a timely notice of appeal to this Court, requesting that their administrative appeal be reinstated. CP 1–18.

V. ARGUMENTS AND AUTHORITIES

A. STANDARD OF REVIEW

Under RCW 51.48.131, appeals from a final decision of the Board are governed by the provisions of the Administrative Procedures Act. *See* RCW 34.05.510 - .598.

An appellate court sits in the same position as the superior court and reviews the Board's assessment based on the record before the Board. *Probst v. Dep't of Lab. & Indus.*, 155 Wn. App. 908, 916, 230 P.3d 271 (2010).

Within such appeals, questions of law, including construction of statutes, are reviewed de novo. *Probst*, 155 Wn. App. at 916 (citing *Superior Asphalt & Concrete Co. v. Dep't of Labor & Indus.*, 112 Wn. App. 291, 296, 49 P.3d 135 (2002) and *Malang v. Dep't of Labor & Indus.*, 139 Wn. App. 677, 684, 162 P.3d 450 (2007)). However, an appellate court will

accord an agency deference in construing the statutes it administers. *Probst*, 155 Wn. App. at 915.

Division III of the Court of Appeals held that statutory interpretation is a question of law, which is subject to de novo review. *Ash v. Dep't of Labor & Indus.*, 173 Wn. App. 559, 562, 294 P.3d 834 (Div. III, 2013) (citing *Cosmopolitan Eng'g Grp., Inc. v. Ondeo Degremont, Inc.*, 159 Wn.2d 292, 298, 149 P.3d 666 (2006)). The Court held that the “purpose of statutory construction is to give effect to the meaning of legislation.” *Ash*, 173 Wn. App. at 562 (citing *Roberts v. Johnson*, 137 Wn.2d 84, 91, 969 P.2d 446 (1999)).

The clear and unambiguous statutes do not need interpretation. *Ash*, 173 Wn. App. at 562 (citing *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). However, when a statute must be interpreted, the legislation “must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *Ash*, 173 Wn. App. at 562 (citing *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)).

In this case, the key issue involves the definition of the term “undue hardship” as it is used in RCW 51.52.112, and this term’s application to the facts at hand. This issue merits de novo review by this Court.

B. OVERVIEW OF LAW

RCW 51.52.112 is a statute within the Industrial Insurance Act, Title 51 RCW (the Act). The Act's purpose is to provide workers who suffer an on-the-job injury with certain relief. RCW 51.04.010. To provide for such relief to qualifying workers, the Act requires the employers subject to the Act either to pay into a state fund insurance scheme or to qualify as a self-insurer. RCW 51.14.010. If an employer insures its workers' relief with the state fund, the Act requires that employer to pay certain industrial insurance premiums, which is a tax; the amounts of the taxes are based on the degree of occupational hazard. RCW 51.16.035; RCW 51.08.015.

If an employer does not pay this tax, the Department has the authority to collect it, along with certain penalties and interest. RCW 51.16.155; RCW 51.48.210. When the Department calculates the tax due, along with applicable interest and penalties, the Department issues to the employer a notice and order of assessment that certifies the amount owed. RCW 51.48.120. If an employer disagrees with the Department's assessment, the employer has the right to appeal the assessment to the Board, and once this administrative remedy is exhausted, the employer may

further appeal to the superior court. RCW 51.48.131; RCW 51.52.104; RCW 51.52.106; RCW 51.52.110.

However, to appeal the Department's assessment in superior court, the employer must first satisfy the requirements of RCW 51.52.112, which states:

All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest unless the court determines that there would be an undue hardship to the employer. In the event an employer prevails in a court action, the employer shall be allowed interest on all taxes, penalties, and interest paid by the employer but determined by a final order of the court to not be due, from the date such taxes, penalties, and interest were paid. Interest shall be at the rate allowed by law as prejudgment interest.

Thus, to meet the requirements of RCW 51.52.112, the employer must either (1) prepay all taxes, penalties, and interest in full, or (2) suffer undue hardship in paying them.

Here, the fact that the Firm did not prepay the assessment in full is not in dispute. The key issue on appeal is whether the trial court correctly defined the term "undue hardship" in the context of RCW 51.52.112 and applied it to the facts of this case.

The trial court erroneously defined the undue hardship standard and found that the Firm did not meet this standard because it did not show evidence of hardship to its employees and/or customers.

**C. TRIAL COURT’S DEFINITION OF UNDUE
HARDSHIP STANDARD ERRONEOUS AS A
MATTER OF LAW**

1. Definition of Term “Indigency” under GR 34

The trial court erroneously contrasted the indigency standard of GR 34 for individuals with the undue hardship standard of RCW 51.52.112 for the employers. RP 22-23.

GR 34(a) provides, in part: “Any individual, on the basis of indigent status as defined herein, may seek a waiver of filing fees or surcharges the payment of which is a condition precedent to a litigant’s ability to secure access to judicial relief from a judicial officer in the applicable trial court.”

“GR 34(a)(3) provides that an individual may be found indigent under the rule in three ways. First, a litigant who receives need-based, means-tested assistance (such as TANF or food stamps), or whose household income is at or below 125 percent of the federal poverty guideline is automatically deemed indigent. GR 34(a)(3)(A), (B). Second, a litigant whose household income is above 125 percent of the federal poverty guideline may still be deemed indigent if the trial court finds that recurring

basic living expenses or ‘other compelling circumstances’ render that person unable to pay the mandatory fees and charges. GR 34(a)(3)(C), (D). Finally, a litigant represented by a ‘qualified legal services provider’ (QLSP) is granted a presumption of indigency if counsel states that the individual was screened and found eligible for the QLSP’s services. GR 34(a)(4).” *Jafar v. Webb*, 177 Wn.2d 520, 526, 303 P.3d 1042 (2013).

The comment to GR 34 provides: “The adoption of this rule is rooted in the constitutional premise that every level of court has the inherent authority to waive payment of filing fees and surcharges on a case by case basis. Each court is responsible for the proper and impartial administration of justice which includes ensuring that meaningful access to judicial review is available to the poor as well as to those who can afford to pay.”

Under *Jafar*, a trial court must waive all fees once a litigant is determined to be indigent under GR 34. *Jafar*, 177 Wn.2d at 527, 33 P.3d 1042 (2013).

In this case, the trial court ruled that, in contrast to GR 34, which applies to the individual litigants, the undue hardship standard of RCW 51.52.112 applies to the employers; therefore, the undue hardship standard for the employers must mean something different, something other than indigency for an individual. RP 22-23. In response, the Department stated that it had

always looked at the undue hardship standard of RCW 51.52.112 in the context of indigency or financial insolvency of the employer, which was the only way the undue hardship standard of RCW 51.52.112 had ever been interpreted. RP 7-8, 10.

Moreover, the Department acknowledged that, in this case, the Firm is the sole proprietorship, so the employer here is in fact an individual. RP 9. Thus, a showing of indigency of these Appellants satisfies the undue hardship standard of RCW 51.52.112.

Mr. Jones and Mrs. Jones presented compelling evidence that their Firm had gone out of business and they became indigent. CP 65-119. The Appellants showed that they had no ability to come up with the funds to prepay over \$106,000; however, the trial court erroneously disregarded this evidence and found that prepaying the remaining portion of the assessment would not cause these Appellants undue hardship. The trial court's order thus effectively denied the indigent Appellants the opportunity to prosecute their appeal on its merits.

2. Trial Court's Interpretation of "Undue Hardship" Standard Impossible

The trial court ruled in error that the "undue hardship" standard for the employers under RCW 51.52.112 must necessarily mean something

different, something other than the indigency standard for individuals, as that standard is defined in GR 34. RP 22–23.

The trial court created its own standard of the “undue hardship” in the context of RCW 51.52.112: “Would other people be put out work, what would the ramifications be for other people, that kind of hardship, are there clients of the employer that would be put in a difficult situation, those sorts of things that I think are different than just showing indigency.” RP 23.

There is no known authority that would support this interpretation of the undue hardship standard by the trial court. Moreover, if this Court agrees with the trial court, then as a result, many appellants would be disqualified automatically from appealing the Department’s assessments. For example, any employer, such as the Firm, that has no employees or customers at the time it appeals to the trial court, would automatically be precluded from seeking an order of undue hardship because it would have no employees or customers who could testify as to their undue hardship, as this standard has been defined by the trial court. This result is illogical and impossible to meet for many current and future appellants; this is not the result the legislature intended.

The trial court’s construction of the undue hardship standard of RCW 51.52.112 would mean that the undue hardship waiver could not be sought

by a sole proprietor who has no employees, or by a firm that stopped doing business and thus cannot cause any additional harm to any customers or employees by prepaying the Department's assessment.

There is no known authority or legislative history that would confirm the legislative intent to apply RCW 51.52.112 only to the employers who are able to show hardship to their employees and/or customers. A firm that is no longer doing business should be allowed to receive a hardship waiver under RCW 51.52.112.

Moreover, the undue hardship standard should apply to the Appellants, not to some unrelated third parties. In this case, where the Firm is a sole proprietorship, a showing that the owners of that Firm have become indigent should be sufficient for a showing of undue hardship under RCW 51.52.112.

Thus, the trial court erred as a matter of law in contrasting the undue hardship standard of RCW 51.52.112 with the indigency standard of GR 34.

3. Trial Court's Interpretation of "Undue Hardship" Standard Unduly Burdensome

For those appellants who do have employees and/or customers at the time they appeal to a superior court, the trial court's interpretation of the undue hardship standard of RCW 51.52.112 may require a separate evidentiary hearing where an appellant would have the burden to show that

the appellant's employees and/or customers would experience undue hardship if the appellant is ordered to prepay the Department's assessment. Such a hearing, in and of itself, may create an additional financial burden for an appellant. For a struggling appellant, such a requirement would create yet another substantial financial burden and thus a hurdle to overcome before an appellant, such as the Firm, may begin to pursue to the merits of the appeal.

4. Trial court erroneously contrasted the indigency standard of GR 34 with the undue hardship standard of RCW 51.52.112

The Department has always interpreted the undue hardship standard of RCW 51.52.112 to mean actual, not theoretical, indigency of an employer. RP 7-8, 10. Moreover, in this case, the Firm is a sole proprietorship, which means that the employer is in fact an individual litigant, and the showing of that individual's indigency should satisfy the undue hardship standard of RCW 51.52.112.

The sole issue raised by the Department was credibility of the Firm's evidence. RP 6-7. However, the trial court did not rule on sufficiency of the evidence presented; instead, the trial court ruled that, because the Firm did not show hardship to its employees or customers, the Firm failed to show undue hardship. RP 22-24. It was an error of the trial court to completely disregard the Appellants' evidence of indigency when

determining whether the Appellants qualify for the undue hardship waiver under RCW 51.52.112.

**D. RECORD IS SUFFICIENT TO DEMONSTRATE
NEED FOR WAIVER; IN ALTERNATIVE
REMAND FOR DETERMINATION**

The Appellants demonstrated that they are indigent. CP 65-119. This evidence is more than sufficient to show undue hardship, and the order of undue hardship should have been entered.

The Firm has established good cause for the application of the waiver of prepayment under the undue hardship standard of RCW 51.52.112. Since this Court sits in the same position as the trial court, this Court should enter the order of undue hardship and remand the case to the trial court, so that the Appellants are permitted to pursue the merits of their appeal.

In the alternative, since the trial court did not reach the question of whether the Firm had sufficiently established undue hardship, this Court could opt to remand to the trial court for a determination of that issue with the instructions on the proper interpretation of the undue hardship standard of RCW 51.52.112.

E. DEPARTMENT WAIVED PROCEDURAL ARGUMENT

The Department is precluded from claiming now that the Appellants were required to file their own motion for an order of undue hardship because the Department did not object to the trial court addressing the undue hardship issue during the Department's motion hearing. RP 22.

During the Department's motion hearing, the Department's sole focus was no whether the Appellants' documents were credible. RP 6-7. The Department did not argue, either in its motion to dismiss, or during the motion hearing, that the Appellants' failure to file their own motion for an order of undue hardship somehow prevented the trial court from having the jurisdiction to rule on the hardship issue. Moreover, when the trial judge specifically asked the Department whether it had any objection to the trial court addressing the hardship issue during the Department's motion hearing, the Department did not object. RP 22. Thus, the Department should be estopped from using the fact that the Appellants did not file their own motion as the basis to prevent the Appellants from pursuing their appeal.

"Equitable estoppel prevents a party from taking a position inconsistent with a previous one where inequitable consequences would result to a party who has justifiably and in good faith relied." *Silverstreak, Inc. v. Dep't of Labor & Indus.*, 159 Wn.2d 868, 887, 154 P.3d 891 (2007) (citing

Kramarevcky v. Dep't of Soc. & Health Servs., 122 Wn.2d 738, 743, 863 P.2d 535 (1993) and *Wilson v. Westinghouse Elec. Corp.*, 85 Wn.2d 78, 81, 530 P.2d 298 (1975)). “When equitable estoppel is asserted against the government, the party asserting estoppel must establish five elements by clear, cogent, and convincing evidence: (1) a statement, admission, or act by the party to be estopped, which is inconsistent with its later claims, (2) the asserting party acted in reliance upon the statement or action, (3) injury would result to the asserting party if the other party were allowed to repudiate its prior statement or action, (4) estoppel is ‘necessary to prevent a manifest injustice,’ and (5) estoppel will not impair governmental functions.” *Silverstreak, Inc.*, 159 Wn.2d at 887, 154 P.3d 891 (citing *Kramarevcky*, 122 Wash.2d at 743, 863 P.2d 535). Each of these elements is present here:

First, the Department had no objection to the trial court addressing the hardship issue during the Department’s motion hearing (RP 22); therefore, the Department should be precluded from asserting now that the dismissal of the Firm’s appeal should be affirmed due to the failure of the Appellants to bring their own motion for an order of undue hardship.

Second, in bringing their appeal to this Court, the Appellants relied on the fact that the Department had no objection to the trial court’s ruling on

the hardship issue without the Appellants having brought their own motion for an order of undue hardship. The Firm's appeal was dismissed for reasons other than their failure to bring their own motion; the Appellants relied on this fact to bring this appeal. Accordingly, the Department should be estopped from raising this issue now.

Third, an injury is clear. The Firm's appeal was dismissed, and the Department presumably will seek to have that dismissal affirmed. If the Department is permitted to change its position on whether the trial court had jurisdiction to rule on the hardship issue without the Appellants having brought their own motion, such a change will be detrimental Mr. and Mrs. Jones.

Fourth, it would be manifestly unjust to deny the Appellants now their right to appeal the trial court's ruling when, at the trial court, no objection was noted to their ability to present evidence of undue hardship by way of a response to the Department's motion, rather than via bringing the Appellants' own motion for an order of undue hardship.

Finally, no governmental functions will be hindered because the Appellants merely seek protection already contemplated by RCW 51.52.112. The fact that the Appellants presented their evidence of hardship in response to the Department's motion, rather than as a part of Appellants'

own motion, does nothing to impede or impair governmental functioning. Therefore, estoppel should apply.

For these reasons, the Department has waived any right to claim that the Appellants' failure to bring their own motion for an order of undue hardship is a valid basis to preclude this appeal.

F. ATTORNEY FEES AND COSTS SHOULD BE AWARDED TO APPELLANTS

Attorney fees and costs should be assessed in favor of Mr. and Mr. Jones to reimburse them for the costs associated with prosecuting this matter. RCW 51.52.112 provides a mechanism for seeking relief from the prepayment requirement. The Appellants sought to obtain that relief. Although the Appellants did not bring their own motion for an order of undue hardship, the Department did not argue during its own motion hearing that the fact that the Appellants did not bring their own motion made any difference at all; instead, the Department argued only as to credibility of the evidence presented.

However, the trial court came up with its own erroneous construction of the undue hardship standard under RCW 51.52.112, and as a result, the Appellants were forced to undertake this appeal. The Department now stands to benefit from the mistake of the lower court. For this reason, the Appellants seek an award of their reasonable attorney fees and costs.

VI. CONCLUSION

For the reasons stated herein, the trial court's order should be reversed, the order of the undue hardship should be entered, and the Firm should be permitted to pursue the substantive portion of its administrative appeal.

Finally, Mr. and Mrs. Jones should receive reimbursement for attorney fees and costs associated with pursuing this appeal.

RESPECTFULLY SUBMITTED this 19th day of July, 2018.



Lana K. Rich, WSBA #34109
Attorney for Appellant

FILED
COURT OF APPEALS
DIVISION II
2018 JUL 23 PM 3:42
STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON

CHRIS and KATRINA JONES, dba
DREAM TEAM CONSTRUCTION, a
sole proprietorship, UBI 603 224 356,

Appellants

v.

DEPARTMENT OF LABOR AND
INDUSTRIES OF THE STATE OF
WASHINGTON,

Respondent.

N0. 52031-1-II

DECLARATION OF MAILING

I, Lana K. Rich, declare under penalty of perjury pursuant to the laws of the State of Washington that, on the below date, I filed with the Washington State Court of Appeals, Division II, via U.S. Mail, postage prepaid, the original and one copy of the Appellant's Brief, and that I further served a copy of the Appellant's Brief, via U.S. mail, postage prepaid, upon:

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DECLARATION OF MAILING

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7 Dated this 19th day of July, 2018, at Bellevue, Washington.
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11 Lana K. Rich, WSBA #34109
12 Attorney for Plaintiffs/Appellants
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